

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12013 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI PATTANI

Versus

GUJARAT WATER SUPPLY & SEWAGE BOARD

Appearance:

MR SHALIN MEHTA for Petitioners
MR VB GHARANIA, AGP for Respondent No.2
MR DG CHAUHAN for Respondent Nos.1, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/08/1999

ORAL JUDGEMENT

1. Prayer is made by the petitioners in this Special Civil Application for the directions to the respondents to allow the petitioners to take charge of their duties as Chowkidars in compliance of the order Daftari Adesh Kramank 112/92.

2. It is the case of the petitioners that respondent

nos. 1 and 3 have called the petitioners for interviews on 7.2.1992 for the post of Chowkidar. They have been selected for this post and further from reliable sources they came to know that orders appointing them as Chowkidars in the office of the respondent No.3 are already issued on 24.7.1992. Hence, this Special Civil Application.

3. In the reply filed to the Special Civil Application, respondent Nos.1 and 3 have come up with the defence that the petitioners have no indefeasible right of appointments on the posts merely because they have been selected for the post. Respondent Nos.1 and 3 have given out that appointments are to be given to the petitioners only on the final approval and sanction of the Head Office, but the Head Office has declined to give approval on the ground that the State Government has put ban on new recruitment to any post and instructed the respondents not to make any appointment. Reference is made to the Government circular dated 26.3.1992. It is next contended that now the State Government has given directions to cut 25% of the posts. Similarly, reply has been given by the respondent State of Gujarat.

4. The petitioners by the Civil Application No.3693/99 have brought on record of this case subsequent developments and events taken place during the pendency of it. Reference has been made to the news report in the newspaper "Sandesh" where the State Government has given the directions to make appointments on the backlog of 28,000 vacancies reserved for Scheduled Caste, Scheduled Tribe and other Backward Class. This Civil Application is replied by the State of Gujarat. In the reply, it is stated that there is no backlog of reserved quota i.e. SC, ST and other backward community in the circle office, in the post of Chowkidar, and therefore, the question of filling of the post does not arise. It is further stated that the select list prepared in the year 1992 has already been scrapped and it is no more in existence. In the circle office from 1992 to till date no appointment of Chowkidar either of reserved quota or general category has been made.

5. Learned counsel for the petitioner contended that in view of the subsequent developments which has been taken place and the fact that the petitioners are belonging to reserved category, they should have been given appointments as Chowkidar.

6. It has next been contended that reasons given by the respondents not to act upon the select list is wholly

arbitrary and unjustified. Learned counsel for the respondents supported their action.

7. Having given my thoughtful consideration to the rival contentions made by the learned counsel for the parties, I am satisfied that it is not the case in which any directions is to be given to the respondents now to act upon the select list prepared in the year 1992.

8. The petitioners have not filed rejoinder to the reply filed by the respondents and the fact that there was a ban on the appointments by the Government at the relevant time is an undisputed fact. Any appointment to be made on the post of Chowkidar was subject to the approval by the Head Office and the Head Office not acted arbitrary not to grant any sanction for the appointments in the presence of these undisputed facts. Grounds on which the select list is not acted upon cannot be said to be arbitrary or unjustified in the facts of this case.

9. Learned counsel for the petitioners contended that selection which has been made for typists and peons in the same year has been given appointments and on this basis a plea of discrimination has been raised. These averments made in this Special Civil Application have not been controverted by the respondents. But, however it is undisputed fact that there was a ban on appointment and when the ban was there on the recruitment even if some appointments have been made, it may also equally suffers from illegality. But only on this fact, no plea of discrimination can be permitted to be raised. Reference in this respect may have to the decision of the Apex Court in the case of Chandigarh Administration Vs. Jagjit Singh, AIR 1995 SC 705. Otherwise also it is not the case of the petitioner that those appointments made are still continuing. It is true that the respondents should have given reply to this plea and grounds of the petitioner, but merely on this basis this plea and grounds of the petitioners cannot be accepted. Petitioners have no indefeasible right of appointment and in case the select list is not acted upon by the appointing authority on the grounds given out, which are just, reasonable and cogent, no writ of mandamus can be issued. Grounds given for not acting upon the select list is just, reasonable and cogent and the respondents cannot be compelled more so after seven years of the preparation of the select list to act thereupon. Not only this, that select list has also been ordered to be scrapped and in the facts of this case it cannot be ordered to be revived. Subsequent development which has been taken place has no relevance as this matter has to

be considered with reference to the year in which selection list has been prepared.

10. In the result, Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. No order as to costs.

(S.K.Keshote,J.)

(pathan)